

JHC revises IHC

The JHC, in a bid to make the London market more competitive and to provide a clearer set of clauses, has undertaken the revision of the International Hull Clauses. The revisions were presented to the London maritime community in late October. Heinz Gohlish reports

Hull and Machinery (H&M) insurance is changing, in terms of both substance and style. Whereas the substance of the changing market is most evident in the price of the product, the change in style can best be seen in the underlying cover on offer and the means by which new terms and conditions are being implemented.

During the recently soft rating cycle for H&M insurance, the London market saw a gradual erosion of its dominant position, particularly in favour of local niche operators aligned with major composite insurers. The London insurance market has therefore found itself in a more competitive world market, with its competitors often using some variation of London market wording.

In addition, underwriters were also well aware that their existing H&M wording, Institute Time Clauses (ITC) 01/11/95, was largely unacceptable to both brokers and shipowners with a low take-up rate. As a result, the previous wording, ITC 01/10/83, continued to be commonly used. However, the insurance world has moved on, and underwriters are now expected to provide active and visible support to international safety and regulatory efforts.

It therefore became imperative to revisit the scope of the existing London wording to develop terms that were consistent with current shipping practice and more acceptable to the assured and their intermediaries. The Joint Hull Committee (JHC), representing the International Underwriting Association (IUA) of London and Lloyd's Underwriters' Association, took on this responsibility with a tight 18-month schedule. After two well-publicised consultative drafts in July and October 2002 and with over 1,000 comments reviewed from market practitioners, the Committee's effort was unveiled at Lloyd's on October 31, 2002 with an effective date the following day.

Results

The JHC made no secret of their objective to promote the London insurance market and to retain the initiative in the provision of international H&M insurance. The new wording was designed, according to the JHC, to embrace the working of the H&M market and to reflect the requirements of the shipping industry as well as the current regulatory regimes. However, it was not a complete rewrite of previous wording and much of IHC 01/11/02 will sound familiar.

So, what is the result? First, it must be emphasised that this is still not an "All Risks" policy. This remains a step too far for the London market. The 2002 wording is structured on a "named perils" basis to be used within a MAR policy form. Secondly, the wording avoids the use of warranties wherever possible. Warranties in an insurance policy must be complied with strictly and literally. This has led to some harsh inequities for ship operators and a move away from warranties toward specific clauses is a welcome development. The revised wording supports the provisions of ISM, flag states and classification societies.

Other provisions such as trading limits, salvage and Sue & Labour are still under review. Indeed, market testing of the clauses is ongoing and there will be a further comprehensive review of the wording in June 2003. There will undoubtedly be additional changes and the above specific topics will be clarified.

On balance, the 2002 wording is more logically structured; uses clearer language; tightens up claims handling and settlement procedures; provides better explanations of consequences and more clarity on duties; and also modifies various standard clauses such as Inchmaree (latent defect), Constructive Total Loss, Classification

and ISM, and various exclusions. What the wording does not do, is to substantially increase the scope of cover available to the shipowner.

Structure

The previous ITC hull clauses consisted of 27 clauses with Clause 6 (Cover) being the heart of the policy. This has been replaced by three parts as follows:

- Part 1 The Principal Insuring Conditions - named perils.
- Part 2 Additional clauses, both mandatory and optional.
- Part 3 Claims handling and duties.

Part 1: Under Clause 2, recovery for latent defect damage is amended in that damages are paid only to the extent that the repair costs exceed the costs of correcting the latent defect. Therefore any underlying latent defect is not covered. There is cover for leased equipment (Cl. 3) and parts taken off the vessel (Cl. 4). The Pollution Hazard clause (Cl. 5) is extended and the 3/4th RDC clause (Cl. 6) limits underwriters' costs to 25 per cent of the insured value of the vessel. General Average cover (Cl. 8) has been extended to include awards under Article 14 of the International Convention on Salvage, 1989 as well as GA expenditure allowable under Rule XI(d) of York-Antwerp 1994.

The Navigation Provisions (Cl. 10-12) are no longer warranties, although of course a breach would still invalidate the cover for the duration of that breach. Clause 13 (Classification and ISM) requires full compliance with Class and ISM at inception and throughout the period of insurance. Such failure is an automatic termination of cover. Under the Management clause (Cl. 14) there is a similar automatic termination for changes in ownership, flag, management, bareboat charter or requisitioning of the vessel. There is no cover for a break-up voyage unless otherwise agreed. The Deductible clause (Cl. 15) is unchanged.

For the purpose of ascertaining a Constructive Total Loss (Cl. 21), the costs of repair or recovery must exceed 80 per cent of the insured value. The war, strikes, malicious acts, radioactive contamination and chemical exclusion clauses (Cl. 29-33) have been updated where necessary and take precedence over all other clauses in application.

Part 2: The second part of the International Hull Clauses outlines the additional clauses. These are listed in the table below.

| Clause | Title | Comments |
|--------|-----------------------------|---|
| 34 | Navigation Limits | Old IWL – no longer warranties. |
| 35 | Bering Sea Transit | Navigational & technical requirements |
| 36 | Recommissioning Condition | If laid-up more than 180 days. |
| 37 | Helicopter Engagement | ICS "Guide to Helo/Ship Ops" May 1989 |
| 38 | Premium Payment | To be paid in full within 45 days of inception |
| 39 | Contracts Act 1999 | No benefit to 3 rd parties w/o agreement |
| 40 | 4/4 th Collision | Available as optional extension |
| 41 | Fixed & Floating Objects | Available as optional extension |
| 42 | Returns for Lay-Up | Allowed if more than 30 consecutive days |
| 43 | General Average Absorption | Clause incorporated where agreed |
| 44 | Additional Perils | Based on old IAPC clause where agreed. |

Source: *International Hull Clauses (01/11/02)*

These clauses, to the extent that they may apply, need to be agreed on inception of the policy and are generally attached or modified on the underwriter's discretion.

Part 3: The third part deals with the claims provisions. The Leading Underwriter(s) Clause (Cl. 45) binds following underwriters in respect of claims matters and addresses indemnities and cost sharing for the Lead Underwriter. This part also stipulates that claims must be reported by the Assured to the Leading Underwriter within 180 days of becoming aware of the incident. The Duties of the Assured are set out in Clause 48; and of the Underwriters in Clause 49. This section further stipulates that Underwriters will make a decision on claims within 28 days of the fully documented presentation (Cl. 49).

The provision of security remains discretionary (Cl. 50). Clause 52 deals with recoveries co-operation and stipulates that Underwriters are to pay reasonable (proportional) costs incurred by the Assured in making recoveries. Finally, Clause 53 allows for an Alternative Dispute Resolution (ADR) option in accordance with the current CEDR Solve model procedures. To assist, Lloyd's/IUA have recently established a Mediation Centre and ADR clinics permanently staffed by professional mediators and evaluators.

Summary

The initial market response to the new clauses appears favourable, but there seem to be no ringing endorsements and there are some reservations. It is seen generally as a reasonable compromise between "All Risks" and "Named Perils" and much improved over the 1995 version. However, if it ultimately supplants the 1983 version or helps to generate new business for the London market during a period of increasing premiums remains to be seen.

On the positive side, the IHC 2002 clauses do more closely reflect market realities and current safety and regulatory conventions. They are clearly written and avoid obscure legal and insurance phraseology. They do address claims service issues by giving the underwriters clear and defined targets. And of course, they finally throw out the potential injustice of irrelevant warranties.

On the other hand, the H&M cover available is not increased. The premium payment clause may prove to be too tight when one or two intermediaries are involved (almost always). The new clauses will be seen as a workable update on existing terms and conditions, but not as striking out in any new directions or offering ship owners any tangible benefits for coming to the London market.

Specific comments have ranged from favourable by the Association of Average Adjusters to disappointed by shipowners who hoped that higher premiums would at least be accompanied by wider cover. The International Association of Independent Tanker Owners (INTERTANKO) remains critical of the IHC initiative in that certain terms, such as the premium payment clause, do not explicitly recognise and reward good operators. That appears to remain at the discretion of individual underwriters. Perhaps the most remarkable aspect to this entire exercise is the professional manner in which the IHC were developed. The JHC set out to consult with the industry and insurance market and they did; they announced an early timetable and they stuck to it; the Committee promised to brief their main markets and they did that. Finally it must be remembered that certain key clauses such as GA, Sue & Labour and Salvage are still under review and we have not yet seen the final version. Any further changes however will likely only be a tweaking exercise. Nevertheless, the International Hull Clauses 01/11/02 are a positive but cautious move in the right direction.